



## MID-ATLANTIC ENVIRONMENTAL LAW CENTER

*Defending the Mid-Atlantic*

at Widener University School of Law  
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March 22, 2005

CERTIFIED MAIL/ RETURN RECEIPT REQUESTED

Rodney Hovermale, Manager  
Warm Springs PSD  
271 Wilkes Street  
P.O. Box 456  
Berkeley Springs, WV 25411

Stephen L. Johnson, Acting Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Donald S. Welsh, Regional Administrator, Region III  
United States Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RA00)  
Philadelphia, PA 19103-2029

The Honorable Bob Wise  
Governor of West Virginia  
1900 Kanawha Boulevard, E.  
Charleston, WV 25305

Stephanie R. Timmermeyer or current Cabinet Secretary  
West Virginia Department of Environmental Protection  
1356 Hansford Street  
Charleston, WV 25301

**Re: Notice of Intent to File a Citizen Action Suit under the Clean Water Act  
Concerning Warm Springs PSD**

Dear Messrs. Hovermale, Johnson, Welsh, Capacasa, Wise and Ms. Timmermeyer:

This notice is provided pursuant to section 505(b) of the Federal Water Pollution Control Act (hereinafter the Clean Water Act or "CWA"), 33 U.S.C. §1365(b) of the Potomac Riverkeeper's

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EXECUTIVE SECRETARIAT

intent to file suit against the Warm Springs PSD located at 1226 Hancock Road, Berkeley Springs, WV 25411. The Mid-Atlantic Environmental Law Center ("MAELC") represents the Potomac Riverkeeper, Inc. ("Potomac Riverkeeper") in this matter. The Potomac Riverkeeper brings this action to achieve long-term compliance with the environmental laws and to improve the water quality of the affected watershed.

As described in this letter, the facility is in violation because of discharges from its sewage plant in violation of its National Pollution Discharge Elimination System ("NPDES") permit number WV0027707. The discharge flows into Warm Springs Run which joins the Potomac River.

## **I. IDENTIFICATION OF THE PARTIES AND COUNSEL**

### The Potomac Riverkeeper

The Potomac Riverkeeper is a not-for-profit corporation. Potomac Riverkeeper is a multi-state educational and advocacy group whose mission is "to protect and restore the Potomac River, from its headwaters in West Virginia to the Chesapeake Bay, through citizen action, advocacy and enforcement."

The address of the Potomac Riverkeeper is as follows:

Mr. Ed Merrifield  
Potomac Riverkeeper, Inc.  
1717 Massachusetts NW #600  
Washington, DC 20036  
(202) 222-0707

### The Mid-Atlantic Environmental Law Center

MAELC represents the Potomac Riverkeeper in this matter. MAELC is a not-for-profit environmental law firm that provides legal services to public interest organizations in environmental matters. MAELC works to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by responsible federal, state and local agencies. The Center is located at Widener University School of Law and works in tandem with students in Widener's Environmental and Natural Resources Law Clinic. Please direct all correspondence to:

Kenneth Kristl, Esq.  
Of Counsel, Mid-Atlantic Environmental Law Center  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803-0474  
(302) 477-2053  
(302) 477-2032 (fax)

## **II. BACKGROUND**

In 1972, Congress enacted the Clean Water Act ("CWA") to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). The CWA purpose is "to attain water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. §1251(a)(2). Except as in compliance with a National Pollution Discharge Elimination System permit

("NPDES permit") "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. §1311(a).

The issuance of a NPDES permit allows for discharge of any "pollutant or combination of pollutants, notwithstanding section 1311(a) upon condition that such discharge will meet either (A) all applicable requirements or (B) prior to taking of necessary implementing actions relating to such requirements." 33 U.S.C. §1342(a). The State of West Virginia under the delegated authority of 1342(b) of the CWA issued the Warm Springs PSD a NPDES permit, WV0027707, on January 23, 2003.

Records show that the facility has violated and continues to violate "an effluent standard or limitation" as used in section 505(a)(i)(A) of the CWA, 33U.S.C. §1365(a)(1)(A), and defined in section 505(f) of the CWA, 33 U.S.C. §1365(f), by failing to comply with its NPDES permit.

Section 505(b) of the CWA, 33 U.S.C. §1365(b) requires that sixty (60) days prior to the filing of a citizen suit in the appropriate federal court under section 505(a) of the CWA that the alleged violator, the Environmental Protection Agency, and the State in which the violations occur be given notice of the alleged violation.

Violations of the terms of the Warm Springs PSD permit have occurred and continue to occur at its facility located at 1226 Hancock Road, Berkeley Springs, WV 25411. Reported information including the monthly discharge monitoring reports ("DMRs") filed by Warm Springs with the West Virginia Department of Environmental Protection ("WVDEP") as well as reports from the Enforcement and Compliance History Online (ECHO) website ([www.epa.gov/echo](http://www.epa.gov/echo)) demonstrate that the Warm Springs PSD has violated its applicable NPDES permit limitations on a continuous and/or intermittent basis in at least the following respects (with regard to pipe outlet number 001 unless otherwise provided):

### **III. WARM SPRINGS PSD'S VIOLATIONS OF AN EFFLUENT STANDARD OR LIMITATION IN NPDES PERMIT NUMBER WV0027707**

#### **A. BOD Violations**

1. Monthly Average Quantity Limit: The permit limit for quantity of 5-day Biological Oxygen Demand (average monthly discharge) is 41.7 Lbs/Day. The Warm Springs PSD had exceedances of this limit for the following months:

- a. 183.9 Lbs/Day for September 2004
- b. 52.8 Lbs/Day for August 2004;
- c. 45.9 Lbs/Day for June 2004;
- d. 65.0 Lbs/Day for May 2004;
- e. 81.5 Lbs/Day for February 2004;
- f. 113.5 Lbs/Day for September 2003;
- g. 50.3 Lbs/Day for July 2003;
- h. 84.3 Lbs/Day for June 2003;
- i. 73.0 Lbs/Day for April 2003;
- j. 117.5 Lbs/Day for March 2003;
- k. 61.86 Lbs/Day for December 2002;
- l. 55.0 Lbs/Day for October 2002<sup>1</sup>;
- m. 51.3 Lbs/Day for May 2002.

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<sup>1</sup> 55.0 Lbs/Day with regard to Pipe Outlet Number 002.

2. Daily Maximum Quantity Limit: The permit limit for quantity of 5-day Biological Oxygen Demand (maximum daily discharge) is 83.4 Lbs/Day. The Warm Springs PSD had exceedances of this limit on each day in the following months:

- a. 183.9 Lbs/Day for September 2004;
- b. 113.5 Lbs/Day for September 2003;
- c. 84.3 Lbs/Day for June 2003;
- d. 117.5 Lbs/Day for March 2003.

3. Monthly Average Concentration Limit: The permit limitation for concentration of 5-day Biological Oxygen Demand (average monthly concentration) is 12.5 mg/L. The Warm Springs PSD had exceedances of this limit for the following months:

- a. 14.9 mg/L for August 2004;
- b. 13.4 mg/L for May 2004;
- c. 15.9 mg/L for September 2003;
- d. 12.7 mg/L for July 2003;
- e. 16.8 mg/L for June 2003;
- f. 17.0 mg/L for March 2003;
- g. 55.0 mg/L for October 2002<sup>2</sup>;
- h. 13.0 mg/L for July 2002.<sup>3</sup>

4. The permit limitations for 5-day Biological Oxygen Demand (maximum daily concentration) is 25 mg/L. The Warm Springs PSD DMRs indicate violations with a concentration of 55.0 mg/L for each day in October 2002.

5. The permit limitation for year round Biological Oxygen Demand (monthly average removal) is equal to or greater than 85% removal. The Warm Springs PSD DMRs indicate a percentage of 78% for July 2003.

#### **B. Total Suspended Solids Violations**

1. The permit limitation for Total Suspended Solids (average monthly discharge) is 100.1 Lbs/Day. The Warm Springs PSD had exceedances of this limit for the following months:

- a. 269.8 Lbs/Day for September 2004;
- b. 128.5 Lbs/Day for September 2003;
- c. 154.6 Lbs/Day for June 2003;
- d. 142.2 Lbs/Day for April 2003;
- e. 130.0 Lbs/Day for March 2003;
- f. 110.3 Lbs/Day for November 2002.

2. The permit limitation for Total Suspended Solids (maximum daily discharge) is 200.2 Lbs/Day. The Warm Springs PSD DMRs indicate a discharge of 269.8 Lbs/Day for each day of September 2004.

3. The permit limitation for Total Suspended Solids (average monthly concentration) is 30 mg/L. The Warm Springs PSD DMRs indicate a concentration of 30.8 mg/L for June 2003.

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<sup>2</sup> 55.0 mg/L for October 2002 with regard to Pipe Outlet Number 002.

<sup>3</sup> 13.0 mg/L with regard to Pipe Outlet Number 002.

### **C. Ammonia Nitrogen Violations**

1. The permit limitation for Ammonia Nitrogen (average monthly discharge) is 16.7 Lbs/Day. The Warm Springs PSD had exceedances of this limit for the following months:

- a. 93.5 Lbs/Day for September 2004;
- b. 19.4 Lbs/Day for June 2004;
- c. 49.1 Lbs/Day for February 2004;
- d. 33.7 Lbs/Day for October 2003;
- e. 45.0 Lbs/Day for September 2003;
- f. 28.7 Lbs/Day for April 2003;
- g. 18.24 Lbs/Day for December 2002;
- h. 24.1 Lbs/Day for August 2002.

2. The permit limitation for Ammonia Nitrogen (maximum daily discharge) is 33.4 Lbs/Day. The Warm Springs PSD had exceedances of this limit for each day of the following months:

- a. 93.5 Lbs/Day for September 2004;
- b. 49.1 Lbs/Day for February 2004;
- c. 54.9 Lbs/Day for October 2003;
- d. 45.0 Lbs/Day for September 2003.

3. The permit limitation for Ammonia Nitrogen (average monthly concentration) is 5 mg/L. The Warm Springs PSD had exceedances of this limit for the following months:

- a. 6.1 mg/L for September 2004;
- b. 5.6 mg/L for February 2004;
- c. 6.3 mg/L for September 2003;
- d. 7.9 mg/L for August 2002.

### **D. Fecal Coliform**

1. The permit limitation for Fecal Coliform (mo. geo. mean) is 200cnts/100mL. The Warm Springs PSD had exceedances of this limit for the following months:

- a. 520 cnts/100 mL for September 2004;
- b. > 1200 cnts/100 mL for March 2004;
- c. 480 cnts/100 mL for January 2004;
- d. 600 cnts/100 mL for August 2003;
- e. 560 cnts/100 mL for July 2002<sup>4</sup>.

2. The permit limitation for Fecal Coliform (maximum daily concentration) is 400 cnts/100 mL. The Warm Springs PSD DMRs indicate a violations with concentrations on each day of the following months:

- a. 520 cnts/100 mL for September 2004;
- b. > 1200 cnts/100 mL for March 2004;
- c. 480 cnts/100 mL for January 2004;
- d. 600 cnts/100 mL for August 2003;

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<sup>4</sup> 560 cnts/100 mL with regard to Pipe Outlet Number 002.

- e. 560 cnts/100 mL for July 2002<sup>5</sup>.

#### E. Solids

1. The permit limitation for year round Solids (monthly average removal) is equal to or greater than 85% removal. The Warm Springs PSD DMRs indicate a percentage of:

- a. 66.8% for September 2004;
- b. 72.0% for August 2004;
- c. 73.3% for September 2003;
- d. 84% for July 2003;
- e. 69.2% for June 2003;
- f. 78% for March 2003.

The CWA authorizes penalties of up to \$27,500 for violations that occurred prior to March 15, 2004, and penalties of up to \$32,500 for violations that occurred after March 15, 2004.

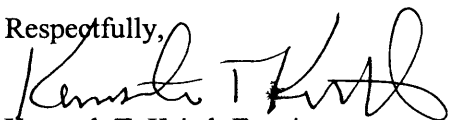
#### IV. CONCLUSION

If the conditions causing the above violations are not corrected within 60 days, so that it is absolutely clear that there is no reasonable likelihood that the violations will recur, the Potomac Riverkeeper intends to file suit seeking civil penalties, injunctive relief, and litigation costs as provided by the CWA, on behalf of itself and its members.

Potomac Riverkeeper reserves the right to include in its complaint allegations of any additional violations of the permit not included in this 60-day notice letter. Furthermore, this letter does not preclude the Potomac Riverkeeper from bringing suit for violations under any other statutory law, or to sue for violations of the CWA other than those described above.

Potomac Riverkeeper believes that this notice of intent to sue complies with the requirements of section 505(b) of the CWA, 33 U.S.C. §1365(b) and accompanying regulations. Please notify us of any settlement discussions as we would like to have the opportunity to participate in such discussions. If you would like to discuss this matter further or provide us with additional information, please contact us within the next two weeks.

Respectfully,



Kenneth T. Kristl, Esquire  
Of Counsel, Mid-Atlantic Environmental Law Center  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803-0474  
Phone: (302) 477-2053  
Fax: (302) 477-2032

Tara E. Hafer, Clinic Intern  
Widener Environmental and Natural Resources Law Clinic  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803-0474  
On behalf of the Potomac Riverkeeper.

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<sup>5</sup> 560 cnts/100 mL with regard to Pipe Outlet Number 002.



## MID-ATLANTIC ENVIRONMENTAL LAW CENTER

*Defending the Mid-Atlantic*

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March 22, 2005

### **CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Berkeley County PSSD  
PO Box 944  
Martinsburg, WV 25402

Stephen L. Johnson, Acting Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Donald Welsh, Regional Administrator  
U.S. Environmental Protection Agency, Region III  
Centro Europa Building, Suite 417  
1650 Arch St.  
Philadelphia, PA 19103-2029

Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RA00)  
Philadelphia, PA 19103-2029

The Honorable Bob Wise  
Governor of West Virginia  
1900 Kanawha Boulevard, E.  
Charleston, WV 25305

Stephanie R. Timmermeyer or current Cabinet Secretary  
West Virginia Department of Environmental Protection  
1356 Hansford Street  
Charleston, WV 25301

### **Re: Notice of Intent to File a Citizen Action Suit under the Clean Water Act Concerning the Berkeley County PSSD Opequon/Hedgesville Plant and Baker Heights Plant.**

Dear Berkeley County PSSD and Messrs. Johnson, Welsh, Capacasa, Wise, and Ms. Timmermeyer:

This notice is provided pursuant to section §505(b) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), 33 U.S.C. § 1365(b), of the Potomac Riverkeeper's intent to file suit against

the Berkeley County Public Service Sewer District ("Berkeley") for illegal discharges and violations by its Opequon/Hedgesville Plant ("Opequon") and Baker Heights Plant ("Baker Heights") and unpermitted discharges from various locations around its system. Opequon and Baker Heights are owned and operated by the Berkeley County Public Service Sewer District. The Mid-Atlantic Environmental Law Center ("MAELC") represents the Potomac Riverkeeper in this manner. The Potomac Riverkeeper brings this action to achieve long-term compliance with environmental laws and to improve the quality of the Potomac River.

As described in this letter, Opequon is in violation of the CWA because Berkeley continues to discharge significant amounts of Ammonia Nitrogen (" $\text{NH}_3$ ") from outlet number 001 and Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), and Oil and Grease from outlet number 101 in violation of its National Pollution Discharge Elimination System ("NPDES") permit WV0082759 (replacing WV0020061 on 9/21/2003).

Also, as described in this letter, Baker Heights, outlet 003, is in violation of the CWA because Berkeley continues to discharge significant amounts of coliform and  $\text{NH}_3$  in violation of its National Pollution Discharge Elimination System ("NPDES") permit WV0082759 (replacing WV0020061 on 9/21/2003).

Also, as described in this letter, there have been numerous unpermitted discharges from various locations in the Berkeley system in the surrounding water bodies.

Berkeley discharges wastewater from the Opequon facility into Eagle Run which flows into the Potomac River and from the Baker Heights facility into Opequon Creek which flows into the Potomac River. The numerous unpermitted discharges flow into various water bodies that flow into the Potomac River. These violations are of special concern to the Potomac Riverkeeper because it is the mission of the Potomac Riverkeeper to protect and restore the Potomac River.

#### I. IDENTIFICATION OF THE PARTIES AND COUNSEL

The Potomac Riverkeeper is a non-profit, educational and charitable organization based in Rockville, Maryland since 2000. Its mission is to protect and restore the Potomac River, from its headwaters in West Virginia to the Chesapeake Bay, through citizen action, advocacy and enforcement. Its members have, continue to, and will in the future use the Potomac River and its tributaries for recreational purposes.

The address of the Potomac Riverkeeper is as follows:

Mr. Ed Merrifield  
Potomac Riverkeeper, Inc.  
1717 Massachusetts N.W. #600  
Washington, D.C. 20036  
(202) 222-0707

MAELC represents the Potomac Riverkeeper in this matter. MAELC is a non-profit environmental law firm that provides legal service for public interest organizations in environmental matters. MAELC works to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by responsible federal, state and local agencies. MAELC is located at the Widener University School of Law and works in tandem with students in Widener's Environmental and Natural Resources Law Clinic. Please direct all correspondence to:



Kenneth Kristl, Esq.  
Of Counsel, Mid-Atlantic Environmental Law Center  
4601 Concord Pike, PO Box 7474  
Wilmington, DE 19803-0474  
(302) 477-2053  
(302) 477-2032(facsimile)

## II. BACKGROUND

In 1972, Congress enacted the Clean Water Act to "restore and maintain the chemical, physical and biological integrity of the Nation's water." 33 U.S.C. § 1251(a). The CWA purpose is to attain water quality which "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2). Except as in compliance with a NPDES permit "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. § 1311(a).

Section §505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the filing of a citizen suit in the appropriate federal court under section §505(a) of the Act that the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur, be given notice of the alleged violation.

NPDES permit WV0082759 became effective on September 21, 2003 (replacing WV0020061 which was issued April 4, 1997) by the EPA under Section 402 of the Act, 33 U.S.C. § 1342, to Berkeley for the discharge of pollutants from the Opequon (which includes outlets 001 and 101), Inwood, and Baker Heights plants. By its own terms, the permit WV0020061 became effective on April 4, 1997 and expired when permit WV0082759 became effective on September 10, 2003. Permit WV0082759 expires on June 30, 2008. Permit WV0082579 is the permit currently in effect.

Berkeley is lacking a permit for the numerous discharges listed below and thus is polluting without a permit in violation of the CWA, 33 U.S.C. § 1311(a).

## III. OPEQUON OUTLET NUMBER 001 DISCHARGES VIOLATE EFFLUENT STANDARDS OR LIMITATIONS IN ITS NPDES PERMIT NUMBERS WV0020061 AND WV0082759.

Violations of the terms of the Berkeley's NPDES permits WV0020061 and WV0082759 have occurred and continue to occur at the Opequon facility. The monthly Discharge Monitoring Reports ("DMR") filed by Berkeley demonstrate that Berkeley has violated its NPDES permit for its Opequon facility outlet number 001 on a continuous basis in at least the following respect:

### A. NH<sub>3</sub> Violations

The 1997 NPDES permit limitations for Opequon outlet 001 for NH<sub>3</sub> are for an average loading of 80.1 lbs/day and a maximum daily concentration of 12 mg/l and average monthly concentration of 6.0 mg/L sampled once per week. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
2/1/2001	2/28/2001	115.1	80.1	lbs/day	Avg. monthly
2/1/2001	2/28/2001	16.75	6.0	mg/l	Avg. monthly

2/1/2001	2/28/2001	18.00	12	mg/l	Max. Daily
3/1/2003	3/31/2003	7.79	6.0	mg/l	Avg. monthly
4/1/2003	4/30/2003	82.93	80.1	lbs/day	Avg. monthly
4/1/2003	4/30/2003	11.04	6.0	mg/l	Avg. monthly
4/1/2003	4/30/2003	13.7	12	mg/l	Max. Daily

The 2003 NPDES permit limitation for Opequon outlet 001 for NH<sub>3</sub> are broken into an interim period and a final period. The interim period begins September 21, 2003 and lasts through midnight September 21, 2004. The final period begins September 22, 2004 and lasts through June 20, 2008. Both periods are further divided into two seasons. Summer season is May 1 through October 31 and winter season is November 1 through April 30. The seasonal limitations do not change from the interim period into the final period.

The 2003 NPDES permit limitations for Opequon outlet 001 for NH<sub>3</sub> in the interim and final periods for summer season are an average loading of 33.4 lbs/day, a maximum loading of 66.7 lbs./day, a maximum daily concentration of 2.5 mg/l, and an average monthly concentration of 5 mg/L to be sampled once per week. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
5/1/2004	5/31/2004	92.68	33.4	lbs/day	Avg. monthly
5/1/2004	5/31/2004	113.65	66.7	lbs/day	Max. Daily
5/1/2004	5/31/2004	9.81	2.5	mg/l	Avg. monthly
5/1/2004	5/31/2004	15.7	5	mg/l	Max. Daily
8/1/2004	8/31/2004	7.08	2.5	mg/l	Avg. monthly
8/1/2004	8/31/2004	11.44	5	mg/l	Max. Daily
9/1/2004	9/30/2004	73.5	66.7	lbs/day	Max. Daily
9/1/2004	9/30/2004	3.84	2.5	mg/l	Avg. monthly
9/1/2004	9/30/2004	7.92	5	mg/l	Max. Daily

The 2003 NPDES permit limitations for Opequon outlet 001 for NH<sub>3</sub> in the interim and final periods for winter season are an average loading of 41.4 lbs/day, a maximum loading of 82.7 lbs./day, a maximum daily concentration of 3.1 mg/l, and an average monthly concentration of 6.2 mg/L to be sampled once per week. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
1/1/2004	1/31/2004	85.36	82.7	lbs/day	Max. Daily
1/1/2004	1/31/2004	5.21	3.1	mg/l	Avg. monthly
1/1/2004	1/31/2004	13.44	6.2	mg/l	Max. Daily
2/1/2004	2/29/2004	83.73	41.4	lbs/day	Avg. monthly
2/1/2004	2/29/2004	102.68	82.7	lbs/day	Max. Daily
2/1/2004	2/29/2004	10.52	3.1	mg/l	Avg. monthly
2/1/2004	2/29/2004	15.20	6.2	mg/l	Max. Daily
3/1/2004	3/31/2004	111.41	41.4	lbs/day	Avg. monthly

3/1/2004	3/31/2004	151.87	82.7	lbs/day	Max. Daily
3/1/2004	3/31/2004	16.78	3.1	mg/l	Avg. monthly
3/1/2004	3/31/2004	22.2	6.2	mg/l	Max. Daily
4/1/2004	4/30/2004	92.68	41.4	lbs/day	Avg. monthly
4/1/2004	4/30/2004	113.65	82.7	lbs/day	Max. Daily
4/1/2004	4/30/2004	9.81	3.1	mg/l	Avg. monthly
4/1/2004	4/30/2004	15.7	6.2	mg/l	Max. Daily

IV. OPEQUON OUTLET NUMBER 101 DISCHARGES VIOLATE EFFLUENT STANDARDS OR LIMITATIONS IN ITS NPDES PERMIT NUMBER WV0082759.

Violations of the terms of the Berkeley's NPDES permit WV0082759 have occurred and continue to occur at the Opequon facility. The monthly DMR filed by Berkeley demonstrate that Berkeley has violated its NPDES permit for its Opequon facility outlet number 101 on a continuous basis in at least the following respect:

A. BOD Violations

The 2003 NPDES permit limitations for Opequon outlet 101 for BOD are for a daily maximum loading of 105 lbs/day and a daily maximum concentration of 250 mg/l to be sampled twice per month. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
10/1/2003	10/31/2003	839	250	mg/l	Max. Daily
11/1/2003	11/30/2003	2326.8	250	mg/l	Max. Daily
12/1/2003	12/31/2003	1520	250	mg/l	Max. Daily
1/1/2004	1/31/2004	209.96	105	lbs/day	Max. Daily
1/1/2004	1/31/2004	2060	250	mg/l	Max. Daily
2/1/2004	2/29/2004	140	105	lbs/day	Max. Daily
2/1/2004	2/29/2004	1752	250	mg/l	Max. Daily
3/1/2004	3/31/2004	1202	250	mg/l	Max. Daily
4/1/2004	4/30/2004	444	250	mg/l	Max. Daily
5/1/2004	5/31/2004	444	250	mg/l	Max. Daily
6/1/2004	6/30/2004	269	250	mg/l	Max. Daily
7/1/2004	7/31/2004	109.37	105	lbs/day	Max. Daily
7/1/2004	7/31/2004	258	250	mg/l	Max. Daily
8/1/2004	8/31/2004	255.45	105	lbs/day	Max. Daily
8/1/2004	8/31/2004	260	250	mg/l	Max. Daily
9/1/2004	9/30/2004	307.71	105	lbs/day	Max. Daily
9/1/2004	9/30/2004	830	250	mg/l	Max. Daily
10/1/2004	10/31/2004	Not reported	105	lbs/day	Max. Daily

10/1/2004	10/31/2004	Not reported	250	mg/l	Max. Daily
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### B. TSS Violations

The 2003 NPDES permit limitations for Opequon outlet 101 for TSS are for a maximum daily loading of 105 lbs/day and a daily maximum concentration of 250 mg/l to be sampled twice a month. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
10/1/2003	10/31/2003	300	250	mg/l	Max. Daily
11/1/2003	11/30/2003	Not reported			
1/1/2004	1/31/2004	644	250	mg/l	Max. Daily
2/1/2004	2/29/2004	276	250	mg/l	Max. Daily
3/1/2004	3/31/2004	660	250	mg/l	Max. Daily
4/1/2004	4/30/2004	260	250	mg/l	Max. Daily
5/1/2004	5/31/2004	260	250	mg/l	Max. Daily
6/1/2004	6/30/2004	710	250	mg/l	Max. Daily
7/1/2004	7/31/2004	109.37	105	lbs/day	Max. Daily
7/1/2004	7/31/2004	593	250	mg/l	Max. Daily
8/1/2004	8/31/2004	255.45	105	lbs/day	Max. Daily
8/1/2004	8/31/2004	690	250	mg/l	Max. Daily
9/1/2004	9/30/2004	307.71	105	lbs/day	Max. Daily
9/1/2004	9/30/2004	830	250	mg/l	Max. Daily
10/1/2004	10/31/2004	Not reported	105	lbs/day	Max. Daily
10/1/2004	10/31/2004	Not reported	250	mg/l	Max. Daily

### C. Oil & Grease Violations

The 2003 NPDES permit limitations for Opequon outlet 101 for Oil & Grease are for a maximum daily loading of 12.5 lbs/day and a daily maximum concentration of 30 mg/l to be sampled twice per month. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
3/1/2003	3/31/2003	31.2	30	mg/l	Max. Daily
10/1/2003	10/31/2003	71.2	30	mg/l	Max. Daily
11/1/2003	11/30/2003	77.9	30	mg/l	Max. Daily
12/1/2003	12/31/2003	36.5	30	mg/l	Max. Daily
2/1/2004	2/29/2004	41.8	30	mg/l	Max. Daily
3/1/2004	3/31/2004	48.4	30	mg/l	Max. Daily
4/1/2004	4/30/2004	33.5	30	mg/l	Max. Daily

5/1/2004	5/31/2004	33.5	30	mg/l	Max. Daily
6/1/2004	6/30/2004	36.5	30	mg/l	Max. Daily
7/1/2004	7/31/2004	28.97	12.5	lbs/day	Max. Daily
7/1/2004	7/31/2004	129.0	30	mg/l	Max. Daily
10/1/2004	10/31/2004	Not tested	12.5	lbs/day	Max. Daily
10/1/2004	10/31/2004	Not tested	30	mg/l	Max. Daily

V. **BAKER HEIGHTS OUTLET NUMBER 003 DISCHARGES VIOLATE EFFLUENT STANDARDS OR LIMITATIONS IN ITS NPDES PERMIT NUMBER WV0082759.**

Violations of the terms of the Berkeley's NPDES permit WV0082759 have occurred and continue to occur at the Baker Heights facility. The monthly DMR filed by Berkeley demonstrate that Berkeley has violated its NPDES permit for its Baker Heights facility on a continuous basis in at least the following respect:

**A. Coliform Violations**

The 2003 NPDES permit limitations for Baker Heights for coliform are for an average monthly concentration of 200 cnfs/100ml and a maximum daily concentration of 400 cnfs/100ml to be sampled once per week. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
12/1/2003	12/31/2003	>300	200	cnfs/100ml	Avg. monthly
2/1/2004	2/29/2004	306	200	cnfs/100ml	Avg. monthly
2/1/2004	2/29/2004	>600	400	cnfs/100ml	Max. Daily
3/1/2004	3/31/2004	>300	200	cnfs/100ml	Avg. monthly
3/1/2004	3/31/2004	>300	400	cnfs/100ml	Max. Daily
5/1/2004	5/31/2004	300	200	cnfs/100ml	Avg. monthly
7/1/2004	7/31/2004	232	200	cnfs/100ml	Avg. monthly

**B. NH<sub>3</sub> Violations**

The 2003 NPDES permit limitations for Baker Heights for NH<sub>3</sub> are broken into an interim period and a final period. The interim period begins September 21, 2003 and lasts through midnight March 21, 2005. The final period begins March 22, 2005 and lasts through June 20, 2008. Both periods are further divided into two seasons. Summer season is May 1 through October 31 and winter season is November 1 through April 30. The seasonal limitations do not change from the interim period into the final period.

The 2003 NPDES permit limitations for Baker Heights for NH<sub>3</sub> in the interim and final periods for summer season are an average loading of 18.8 lbs/day, a maximum daily loading of 37.5 lbs/day, an

average monthly concentration of 2.5 mg/l, and a maximum daily concentration of 5 mg/l to be sampled once per week. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
5/1/2004	5/31/2004	97.74	18.8	mg/l	Avg. monthly
5/1/2004	5/31/2004	107.91	37.5	lbs/day	Max. Daily
5/1/2004	5/31/2004	15.2	2.5	mg/l	Avg. monthly
5/1/2004	5/31/2004	18.5	5	mg/l	Max. Daily
6/1/2004	6/30/2004	43.01	18.8	mg/l	Avg. monthly
6/1/2004	6/30/2004	66.04	37.5	lbs/day	Max. Daily
6/1/2004	6/30/2004	6.85	2.5	mg/l	Avg. monthly
6/1/2004	6/30/2004	9.97	5	mg/l	Max. Daily

The 2003 NPDES permit limitations for Baker Heights for NH<sub>3</sub> in the interim and final periods for winter season are an average loading of 23.3 lbs/day, a maximum daily loading of 46.5 lbs/day, an average monthly concentration of 3.1 mg/l, and a maximum daily concentration of 6.2 mg/l to be sampled once per week. Berkeley violated effluent limitations on the following dates:

When		Actual	Allowed	Unit	Measures
2/1/2004	2/29/2004	41.42	23.3	lbs/day	Avg. monthly
2/1/2004	2/29/2004	53.57	46.5	lbs/day	Max. Daily
2/1/2004	2/29/2004	6.15	3.1	mg/l	Avg. monthly
2/1/2004	2/29/2004	7.0	6.2	mg/l	Max. Daily
3/1/2004	3/31/2004	98.74	23.3	lbs/day	Avg. monthly
3/1/2004	3/31/2004	98.74	46.5	lbs/day	Max. Daily
3/1/2004	3/31/2004	16.6	3.1	mg/l	Avg. monthly
3/1/2004	3/31/2004	16.6	6.2	mg/l	Max. Daily
4/1/2004	4/30/2004	55.34	23.3	lbs/day	Avg. monthly
4/1/2004	4/30/2004	60.89	46.5	mg/l	Max. Daily
4/1/2004	4/30/2004	8.95	3.1	mg/l	Avg. monthly
4/1/2004	4/30/2004	9.15	6.2	mg/l	Max. Daily

#### VI. UNPERMITTED DISCHARGE IN WATERBODIES BY BERKELEY COUNTY PSSD THROUGHOUT ITS SYSTEM

Berkeley has violated the CWA, 33 U.S.C. §1311(a) by unpermitted discharges of raw sewage and/or pollutants into nearby waterbodies throughout its system. Berkeley County Public Service Sewer District "Spill Alert Forms" filed by Berkeley with the State of West Virginia demonstrate that Berkeley had such unpermitted discharges into nearby waterbodies throughout its system on a continuous basis in at least the following respect:

Date	Location	Duration
2/5/2002	Neiland Park Lift Station	unknown
3/11/2002	Rock Cliff Drive, Martinsburg	unknown
4/3/2002	Rt 11 & Tabler Station Road	unknown
5/9/2002	Post Air	30 minutes
5/15/2002	Baker Heights Effluent	unknown
5/30/2002	Grapevine Road (Dodson's Lift Station)	unknown
7/22/2002	Opequon Lane	unknown
10/2/2002	1181 Grapevine Road, Martinsburg	unknown
10/4/2002	Rt. 9 West Hedgesville	1 hour
10/4/2002	Damview Drive - Opequon Creek	unknown
10/13/2002	Kelly Island Road Lift Station	unknown
11/6/2002	Neiland Park Lift Station	unknown
1/2/2003	Rt 9 Hedgesville, Echert's Lift Station	unknown
3/14/2003	Inwood WWTP	6 hours
3/17/2003	Glentners Lift Station 901	unknown
3/21/2003	O/H SBR's	unknown
4/4/2003	O/H SBR's	unknown
4/9/2003	O/H SBR's	unknown
5/13/2003	Rt. 9 West & Stribling Road	unknown
5/16/2003	O/H SBR's	unknown
6/4/2003	Rt. 11 North - Kisner Lift Station	unknown
6/4/2003	Apache La Station - Rt. 9 West	unknown
6/4/2003	Opequon Lane off of Rt. 9 East	unknown
6/7/2003	Opequon Lane Lift Station	unknown
6/7/2003	Rt. 11 North - Kisner Lift Station	unknown
6/7/2003	Rt. 11 North - Elm Tree Lift Station	unknown
6/7/2003	Paynes Ford Road Lift Station	unknown
6/7/2003	Kelly Island Road Lift Station	unknown
6/8/2003	Sycamore Village	unknown
6/13/2003	602 Royal Creast	4 hours
6/14/2003	Rt. 11 North - Kisner Lift Station	> 37 hours
7/29/2003	Big Dodson's Lift Station	unknown
9/4/2003	Opequon Creek Lift Station	unknown
9/4/2003	Rt. 11 North - Kisner Lift Station	unknown
9/19/2003	Neiland Park Lift Station	unknown
10/3/2003	Mobile Home Park - Rt. 9 East	unknown
11/3/2003	Mills Farm Lift Station	unknown
2/6/2004	BKI-PSI Lift Station - Opequon Lane	24 hours
2/6/2004	Morgan Lift Station - Rt. 901	18 hours
2/6/2004	Gletner Lift Station - Rt. 901	18 hours
2/6/2004	Big Clifford Drive Lift Station	18 hours
2/6/2004	Hedgesville Sell Lift Station - Rt. 9 West	4 hours
2/6/2004	Rockcliff Drive Lift Station	2 hours
4/9/2004	Lights Addition Lift Station	3 hours
5/5/2004	Honeywood Subdivision	2 hours

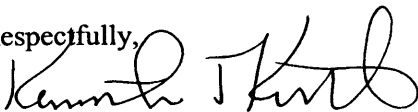
## VII. CONCLUSION

If the conditions causing the above violations are not corrected within 60 days, such that it is absolutely clear that there is no reasonable likelihood that the violations will recur, the Potomac Riverkeeper intends to file suit seeking civil penalties, injunctive relief, and litigation costs as provided by the Act, on behalf of itself and its members.

The Potomac Riverkeeper reserves the right to include in its complaint allegations of any additional violations of the permit not included in this 60-day notice letter. Furthermore, this letter does not preclude Potomac Riverkeeper from bringing suit for violations under any other statutory law, or to sue for violations of the CWA other than those described above.

The Potomac Riverkeeper believes that this notice of intent to sue complies with the requirements of §505(b) of the CWA, 33 U.S.C. §1365(b) and accompanying regulations. We would like to be contacted if there are any discussions between EPA and Berkeley to resolve these issues. If you would like to discuss this matter further or provide us with additional information, please contact us within the next two weeks.

Respectfully,



Kenneth T. Kristl, Esquire  
Of Counsel, Mid-Atlantic Environmental Law Center  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803-0474  
Phone: (302) 477-2053  
Fax: (302) 477-2032

Jason Marmon, Clinic Intern  
Widener Environmental and Natural Resources Law Clinic  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803-0474  
On behalf of the Potomac Riverkeeper





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March 22, 2005

### **CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Mr. David G. Vascoy, Vice President  
Knobley Estates Sanitary Corporation  
1 Grand Central Park, Suite 2040  
Keyser, WV 26726

Stephen L. Johnson, Acting Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Donald S. Welsh, Regional Administrator, Region III  
United States Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RA00)  
Philadelphia, PA 19103-2029

The Honorable Bob Wise  
Governor of West Virginia  
1900 Kanawha Boulevard, E.  
Charleston, WV 25305

Stephanie R. Timmermeyer  
Cabinet Secretary, West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

Allyn Turner  
Director, Office of Water Resources, WV Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

**Re: Notice of Intent to File a Citizen Action Suit under the Clean Water Act  
Concerning Knobley Estates Sanitary Corporation**

Dear Messrs. Vascoy, Johnson, Welsh, Capacasa, Wise, Turner, and Ms. Timmermeyer:

This notice is provided pursuant to section §505(b) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), 33 U.S.C. § 1365(b), of Potomac Riverkeeper's intent to file suit against Knobley Estates Sanitary Corporation ("Knobley"), located on Plum Run Road in Short Gap (near Ridgeley), WV for illegal discharges and violations by its sewage treatment facility. The sewage treatment facility is owned and operated by the Knobley Estates Sanitary Corporation. The Mid-Atlantic Environmental Law Center ("MAELC") represents Potomac Riverkeeper in this manner. Potomac Riverkeeper brings this action to achieve long-term compliance with environmental laws and to improve the quality of the North Potomac River.

As described in this letter, Knobley is in violation of the CWA because it continues to discharge significant amounts of Biochemical Oxygen Demand ("BOD"), Nitrogen Ammonia and Fecal Coliform in violation of its National Pollution Discharge Elimination System ("NPDES") permit WV0088897. Additionally, Knobley is in violation of the CWA because it continues to discharge less than the minimum required amount of Dissolved Oxygen ("DO") in violation of its NPDES permit WV0088897. Knobley discharges wastewater from the facility into the North Potomac River. These violations are of special concern to Potomac Riverkeeper because Knobley's discharges have impacted the North Potomac River.

**I. IDENTIFICATION OF THE PARTIES AND COUNSEL**

The Potomac Riverkeeper is a non-profit conservation organization. The mission of Potomac Riverkeeper is to protect and restore the Potomac River, from its headwaters in West Virginia to the Chesapeake Bay, through citizen action, advocacy and enforcement. Specifically, its members have, continue to and will in the future use the North Potomac River. Potomac Riverkeeper's address is as follows:

Mr. Ed Merrifield  
Potomac Riverkeeper, Inc.  
1717 Massachusetts NW #600  
Washington, DC 20036  
(202) 222-0707

MAELC represents Potomac Riverkeeper in this matter. MAELC is a non-profit environmental law firm that provides legal service for public interest organizations in environmental matters. MAELC works to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by responsible federal, state and local agencies. MAELC is located at the Widener University School of Law and works in tandem with students in Widener's Environmental and Natural Resources Law Clinic. Please direct all correspondence to:

Kenneth Kristl, Esq.  
Of Counsel, Mid-Atlantic Environmental Law Center

4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803-0474  
(302) 477-2053  
(302) 477-2032 (facsimile)

## **II. BACKGROUND**

In 1972, Congress enacted the Clean Water Act to "restore and maintain the chemical, physical and biological integrity of the Nation's water." 33 U.S.C. §1251(a). The CWA purpose is to attain water quality which "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2). Except as in compliance with a NPDES permit "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. §1311(a). The term "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). The term pollutant means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water." 33 U.S.C. §1362(6).

Section § 505(b) of the CWA, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the filing of a citizen suit in the appropriate federal court under section § 505(a) of the CWA that the alleged violator, the Environmental Protection Agency ("EPA"), and the State in which the violations occur, be given notice of the alleged violation.

On January 8, 2001, the West Virginia Department of Environmental Protection issued NPDES permit WV0088897 under § 402 of the CWA, 33 U.S.C. § 1342, to Knobley, for the discharge of pollutants from Knobley located in Short Gap (near Ridgeley), West Virginia. By its own terms the permit became effective on February 8, 2001 and is still in effect. Knobley is violating that permit.

## **III. KNOBLEY DISCHARGES VIOLATE EFFLUENT STANDARDS OR LIMITATIONS IN ITS NPDES PERMIT NUMBER WV0088897.**

Violations of the terms of Knobley's NPDES permit WV0088897 have occurred and continue to occur at the facility. The monthly Discharge Monitoring Reports ("DMRs") filed by Knobley demonstrate that Knobley has violated its NPDES permit on a continuous basis in at least the following respects:

### **A. BOD Violations**

The 2001 NPDES permits limitations for BOD is for a loading of 2.5 lbs/day (avg. monthly) and 2.5 lbs/day (max. daily) and a concentration of 5.0 mg/l (avg. monthly) and 10.0 mg/l (max. daily). Knobley violated effluent limitations on the following dates:

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
BOD	7/1/04 - 7/31/04	5.0 mg/l	29.5
BOD	7/1/04 - 7/31/04	10.0 mg/l	29.5

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
BOD	7/1/04 - 7/31/04	2.5 lbs/day	2.6
BOD	7/1/04 - 7/31/04	5.0 lbs/day	2.6
BOD	6/1/04 - 6/30-04	5.0 mg/l	18.8
BOD	6/1/04 - 6/30/04	10.0 mg/l	18.8
BOD	5/1/04 - 5/31/04	5.0 mg/l	19.9
BOD	5/1/04 - 5/31/04	10.0 mg/l	19.9
BOD	5/1/04 - 5/31/04	2.5 lbs/day	10.2
BOD	5/1/04 - 5/31/04	5.0 lbs/day	10.2
BOD	3/1/2004 - 3/31/2004	5.0 mg/l	11.2
BOD	3/1/2004 - 3/31/2004	10.0 mg/l	11.2
BOD	2/1/2004 - 2/29/2004	5.0 mg/l	17.9
BOD	2/1/2004 - 2/29/2004	10.0 mg/l	17.9
BOD	1/1/2004 - 1/31/2004	5.0 mg/l	12.9
BOD	1/1/2004 - 1/31/2004	10.0 mg/l	12.9
BOD	12/1/2003 - 12/31/2003	5.0 mg/l	11.6
BOD	12/1/2003 - 12/31/2003	10.0 mg/l	11.6
BOD	12/1/2003 - 12/31/2003	2.5 lbs/day	2.70
BOD	11/1/2003 - 11/30/2003	5.0 mg/l	24.8
BOD	11/1/2003 - 11/30/2003	10.0 mg/l	24.8
BOD	11/1/2003 - 11/30/2003	2.5 lbs/day	2.55
BOD	10/1/2003 - 10/31/2003	5.0 mg/l	16.0
BOD	10/1/2003 - 10/31/2003	10 mg/l	16.0
BOD	9/1/2003 - 9/30/2003	5.0 mg/l	14.5
BOD	9/1/2003 - 9/30/2003	10.0 mg/l	14.5
BOD	8/1/2003 - 8/31/2003	5.0 mg/l	7.8
BOD	7/1/2003 - 7/31/2003	5.0 mg/l	10.3
BOD	7/1/2003 - 7/31/2003	10.0 mg/l	10.3
BOD	6/1/2003 - 6/30/2003	5.0 mg/l	14.1
BOD	6/1/2003 - 6/30/2003	10.0 mg/l	14.1
BOD	5/1/2003 - 5/31/2003	5.0 mg/l	30.7
BOD	5/1/2003 - 5/31/2003	10.0 mg/l	30.7
BOD	5/1/2003 - 5/31/2003	2.5 lbs/day	2.6
BOD	4/1/2003 - 4/30/2003	5.0 mg/l	27.4
BOD	4/1/2003 - 4/30/2003	10.0 mg/l	27.4
BOD	4/1/2003 - 4/30/2003	2.5 lbs/day	3.7
BOD	3/1/2003 - 3/31/2003	5.0 mg/l	61.2
BOD	3/1/2003 - 3/31/2003	10.0 mg/l	61.2
BOD	3/1/2003 - 3/31/2003	2.5 lbs/day	6.1

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
BOD	3/1/2003 - 3/31/2003	5.0 lbs/day	6.1
BOD	2/1/2003 - 2/28/2003	5.0 mg/l	44.8
BOD	2/1/2003 - 2/28/2003	10.0 mg/l	44.8
BOD	2/1/2003 - 2/28/2003	2.5 lbs/day	5.8
BOD	2/1/2003 - 2/28/2003	5.0 lbs/day	5.8
BOD	1/1/2003 - 1/31/2003	5.0 mg/l	19.3
BOD	1/1/2003 - 1/31/2003	10.0 mg/l	19.3
BOD	12/1/2002 - 12/31/2002	5.0 mg/l	30.5
BOD	12/1/2002 - 12/31/2002	10.0 mg/l	30.5
BOD	12/1/2002 - 12/31/2002	2.5 lbs/day	2.5
BOD	11/1/2002 - 11/30/2002	5.0 mg/l	44.7
BOD	11/1/2002 - 11/30/2002	10.0 mg/l	44.7
BOD	11/1/2002 - 11/30/2002	2.5 lbs/day	8.0
BOD	11/1/2002 - 11/30/2002	5.0 lbs/day	8.0
BOD	10/1/2002 - 10/31/2002	5.0 mg/l	42.4
BOD	10/1/2002 - 10/31/2002	10.0 mg/l	42.4
BOD	10/1/2002 - 10/31/2002	2.5 lbs/day	6.1
BOD	10/1/2002 - 10/31/2002	5.0 lbs/day	6.1
BOD	9/1/2002 - 9/30/2002	5.0 mg/l	32.5
BOD	9/1/2002 - 9/30/2002	10.0 mg/l	32.5
BOD	9/1/2002 - 9/30/2002	2.5 lbs/day	4.6
BOD	7/1/2002 - 7/31/2002	5.0 mg/l	26.9
BOD	7/1/2002 - 7/31/2002	10.0 mg/l	26.9
BOD	7/1/2002 - 7/31/2002	2.5 lbs/day	2.8
BOD	6/1/2002 - 6/30/2002	5.0 mg/l	24.1
BOD	6/1/2002 - 6/30/2002	10.0 mg/l	24.1
BOD	5/1/2002 - 5/31/2002	5.0 mg/l	23.1
BOD	5/1/2002 - 5/31/2002	10.0 mg/l	23.1
BOD	4/1/2002 - 4/30/2002	5.0 mg/l	35.3
BOD	4/1/2002 - 4/30/2002	10.0 mg/l	35.3
BOD	3/1/2002 - 3/31/2002	5.0 mg/l	24.2
BOD	3/1/2002 - 3/31/2002	10.0 mg/l	24.2
BOD	3/1/2002 - 3/31/2002	2.5 lbs/day	3.4
BOD	2/1/2002 - 2/28/2002	5.0 mg/l	28.0
BOD	2/1/2002 - 2/28/2002	10.0 mg/l	28.0
BOD	2/1/2002 - 2/28/2002	2.5 lbs/day	3.7
BOD	12/1/2001 - 12/31/2001	5.0 mg/l	17.1
BOD	12/1/2001 - 12/31/2001	10.0 mg/l	17.1

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
BOD	12/1/2001 - 12/31/2001	2.5 lbs/day	4.1
BOD	11/1/2001 - 11/30/2001	5.0 mg/l	69.3
BOD	11/1/2001 - 11/30/2001	10.0 mg/l	69.3
BOD	11/1/2001 - 11/30/2001	2.5 lbs/day	12.1
BOD	11/1/2001 - 11/30/2001	2.5 lbs/day	12.1
BOD	9/1/2001 - 9/30/2001	5.0 mg/l	62.5
BOD	9/1/2001 - 9/30/2001	10.0 mg/l	62.5
BOD	9/1/2001 - 9/30/2001	2.5 lbs/day	10.7

#### **B. Nitrogen Ammonia Violations**

The 2001 NPDES permit limitation for Nitrogen Ammonia is for a loading of 1.5 lbs/day (avg. monthly) and 3.0 lbs/days (max. daily) and a concentration of 3.0 mg/l (avg. monthly) and 6.0 mg/l (max. daily). Knobley violated effluent limitations on the following dates:

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
Nitrogen Ammonia	7/1/2004 - 7/31/2004	3.0 mg/l	21.56
Nitrogen Ammonia	7/1/2004 - 7/31/2004	6.0 mg/l	21.56
Nitrogen Ammonia	7/1/2004 - 7/31/2004	1.5 lbs/day	1.90
Nitrogen Ammonia	6/1/2004 - 6/30/2004	3.0 mg/l	12.18
Nitrogen Ammonia	6/1/2004 - 6/30/2004	6.0 mg/l	12.18
Nitrogen Ammonia	5/1/2004 - 5/31/2004	3.0 mg/l	12.74
Nitrogen Ammonia	5/1/2004 - 5/31/2004	6.0 mg/l	12.74
Nitrogen Ammonia	5/1/2004 - 5/31/2004	1.5 lbs/day	6.5
Nitrogen Ammonia	5/1/2004 - 5/31/2004	3.0 lbs/day	6.5
Nitrogen Ammonia	4/1/2004 - 4/30/2004	3.0 mg/l	12.30
Nitrogen Ammonia	4/1/2004 - 4/30/2004	6.0 mg/l	12.30
Nitrogen Ammonia	3/1/2004 - 3/31/2004	3.0 mg/l	10.78
Nitrogen Ammonia	3/1/2004 - 3/31/2004	6.0 mg/l	10.78
Nitrogen Ammonia	2/1/2004 - 2/29/2004	3.0 mg/l	18.62
Nitrogen Ammonia	2/1/2004 - 2/29/2004	6.0 mg/l	18.62
Nitrogen Ammonia	1/1/2004 - 1/31/2004	3.0 mg/l	15.54
Nitrogen Ammonia	1/1/2004 - 1/31/2004	6.0 mg/l	15.54
Nitrogen Ammonia	12/1/2003 - 12/31/2003	3.0 mg/l	14.20
Nitrogen Ammonia	12/1/2003 - 12/31/2003	6.0 mg/l	14.20
Nitrogen Ammonia	12/1/2003 - 12/31/2003	1.5 lbs/day	3.40
Nitrogen Ammonia	12/1/2003 - 12/31/2003	3.0 lbs/day	3.40
Nitrogen Ammonia	11/1/2003 - 11/30/2003	3.0 mg/l	14.56
Nitrogen Ammonia	11/1/2003 - 11/30/2003	6.0 mg/l	14.56

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
Nitrogen Ammonia	10/1/2003 - 10/31/2003	3.0 mg/l	10.20
Nitrogen Ammonia	10/1/2003 - 10/31/2003	6.0 mg/l	10.20
Nitrogen Ammonia	9/1/2003 - 9/30/2003	3.0 mg/l	14.28
Nitrogen Ammonia	9/1/2003 - 9/30/2003	6.0 mg/l	14.28
Nitrogen Ammonia	8/1/2003 - 8/31/2003	3.0 mg/l	10.22
Nitrogen Ammonia	8/1/2003 - 8/31/2003	6.0 mg/l	10.22
Nitrogen Ammonia	7/1/2003 - 7/31/2003	3.0 mg/l	16.10
Nitrogen Ammonia	7/1/2003 - 7/31/2003	6.0 mg/l	16.10
Nitrogen Ammonia	6/1/2003 - 6/30/2003	3.0 mg/l	13.86
Nitrogen Ammonia	6/1/2003 - 6/30/2003	6.0 mg/l	13.86
Nitrogen Ammonia	5/1/2003 - 5/31/2003	3.0 mg/l	16.8
Nitrogen Ammonia	5/1/2003 - 5/31/2003	6.0 mg/l	16.8
Nitrogen Ammonia	4/1/2003 - 4/30/2003	3.0 mg/l	14.1
Nitrogen Ammonia	4/1/2003 - 4/30/2003	6.0 mg/l	14.1
Nitrogen Ammonia	4/1/2003 - 4/30/2003	1.5 lbs/day	1.9
Nitrogen Ammonia	3/1/2003 - 3/31/2003	3.0 mg/l	19.8
Nitrogen Ammonia	3/1/2003 - 3/31/2003	6.0 mg/l	19.8
Nitrogen Ammonia	3/1/2003 - 3/31/2003	1.5 lbs/day	1.9
Nitrogen Ammonia	2/1/2003 - 2/28/2003	3.0 mg/l	20.6
Nitrogen Ammonia	2/1/2003 - 2/28/2003	6.0 mg/l	20.6
Nitrogen Ammonia	2/1/2003 - 2/28/2003	1.5 lbs/day	2.6
Nitrogen Ammonia	1/1/2003 - 1/31/2003	3.0 lbs/day	15.8
Nitrogen Ammonia	1/1/2003 - 1/31/2003	6.0 lbs/day	15.8
Nitrogen Ammonia	12/1/2002 - 12/31/2002	3.0 mg/l	16.2
Nitrogen Ammonia	12/1/2002 - 12/31/2002	6.0 mg/l	16.2
Nitrogen Ammonia	12/1/2002 - 12/31/2002	1.5 lbs/day	2.5
Nitrogen Ammonia	11/1/2002 - 11/30/2002	3.0 mg/l	12.3
Nitrogen Ammonia	11/1/2002 - 11/30/2002	6.0 mg/l	12.3
Nitrogen Ammonia	11/1/2002 - 11/30/2002	1.5 lbs/day	2.2
Nitrogen Ammonia	10/1/2002 - 10/31/2002	3.0 mg/l	26.7
Nitrogen Ammonia	10/1/2002 - 10/31/2002	6.0 mg/l	26.7
Nitrogen Ammonia	10/1/2002 - 10/31/2002	1.5 lbs/day	3.8
Nitrogen Ammonia	10/1/2002 - 10/31/2002	3.0 lbs/day	3.8
Nitrogen Ammonia	9/1/2002 - 9/30/2002	3.0 mg/l	29.1
Nitrogen Ammonia	9/1/2002 - 9/30/2002	6.0 mg/l	29.1
Nitrogen Ammonia	9/1/2002 - 9/30/2002	1.5 lbs/day	4.2
Nitrogen Ammonia	9/1/2002 - 9/30/2002	3.0 lbs/day	4.2
Nitrogen Ammonia	7/1/2002 - 7/31/2002	3.0 mg/l	24.6

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
Nitrogen Ammonia	7/1/2002 - 7/31/2002	6.0 mg/l	24.6
Nitrogen Ammonia	7/1/2002 - 7/31/2002	1.5 lbs/day	26.4
Nitrogen Ammonia	7/1/2002 - 7/31/2002	3.0 lbs/day	26.4
Nitrogen Ammonia	6/1/2002 - 6/30/2002	3.0 mg/l	29.4
Nitrogen Ammonia	6/1/2002 - 6/30/2002	6.0 mg/l	29.4
Nitrogen Ammonia	6/1/2002 - 6/30/2002	1.5 lbs/day	3.0
Nitrogen Ammonia	5/1/2002 - 5/31/2002	3.0 mg/l	25.5
Nitrogen Ammonia	5/1/2002 - 5/31/2002	6.0 mg/l	25.5
Nitrogen Ammonia	5/1/2002 - 5/31/2002	1.5 lbs/day	2.6
Nitrogen Ammonia	4/1/2002 - 4/30/2002	3.0 mg/l	18.6
Nitrogen Ammonia	4/1/2002 - 4/30/2002	6.0 mg/l	18.6
Nitrogen Ammonia	3/1/2002 - 3/31/2002	3.0 mg/l	18.4
Nitrogen Ammonia	3/1/2002 - 3/31/2002	6.0 mg/l	18.4
Nitrogen Ammonia	3/1/2002 - 3/31/2002	1.5 lbs/day	2.6
Nitrogen Ammonia	2/1/2002 - 2/28/2002	3.0 mg/l	19.7
Nitrogen Ammonia	2/1/2002 - 2/28/2002	6.0 mg/l	19.7
Nitrogen Ammonia	2/1/2002 - 2/28/2002	1.5 lbs/day	2.6
Nitrogen Ammonia	12/1/2001 - 12/31/2001	3.0 mg/l	23.8
Nitrogen Ammonia	12/1/2001 - 12/31/2001	6.0 mg/l	23.8
Nitrogen Ammonia	12/1/2001 - 12/31/2001	1.5 lbs/day	5.7
Nitrogen Ammonia	12/1/2001 - 12/31/2001	3.0 lbs/day	5.7
Nitrogen Ammonia	11/1/2001 - 11/30/2001	3.0 mg/l	25.6
Nitrogen Ammonia	11/1/2001 - 11/30/2001	6.0 mg/l	25.6
Nitrogen Ammonia	11/1/2001 - 11/30/2001	1.5 lbs/day	4.5
Nitrogen Ammonia	11/1/2001 - 11/30/2001	3.0 lbs/day	4.5
Nitrogen Ammonia	9/1/2001 - 9/30/2001	3.0 mg/l	28.0
Nitrogen Ammonia	9/1/2001 - 9/30/2001	6.0 mg/l	28.0
Nitrogen Ammonia	9/1/2001 - 9/30/2001	1.5 lbs/day	4.8
Nitrogen Ammonia	9/1/2001 - 9/30/2001	3.0 lbs/day	4.8

### C. Fecal Coliform Violations

The 2001 NPDES permit limitation for Fecal Coliform is for a concentration of 200 counts per 100 ml (avg. monthly) and 400 counts per 100 ml (max. daily). Knobley violated effluent limitations on the following dates:

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
Fecal Coliform	7/1/2004 - 7/31/2004	200	>6,000
Fecal Coliform	7/1/2004 - 7/31/2004	400	>6,000



<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
Fecal Coliform	7/1/2004 - 7/31/2004	400	>6,000
Fecal Coliform	5/1/2004 - 5/31/2004	200	>6,000
Fecal Coliform	5/1/2004 - 5/31/2004	400	>6,000
Fecal Coliform	4/1/2004 - 4/30/2004	200	>6,000
Fecal Coliform	4/1/2004 - 4/30/2004	400	>6,000
Fecal Coliform	2/1/2004 - 2/29/2004	200	1,200
Fecal Coliform	2/1/2004 - 2/29/2004	400	1,200
Fecal Coliform	12/1/2003 - 12/31/2003	200	>6,000
Fecal Coliform	12/1/2003 - 12/31/2003	400	>6,000
Fecal Coliform	2/1/2003 - 2/28/2003	200	310
Fecal Coliform	1/1/2003 - 1/31/2003	200	210
Fecal Coliform	10/1/2002 - 10/31/2002	200	5,100
Fecal Coliform	10/1/2002 - 10/31/2002	400	5,100

#### **D. Dissolved Oxygen Violations**

The 2001 NPDES permit limitation for Dissolved Oxygen is for a **minimum** concentration of 6.0 mg/l. Knobley violated effluent limitations on the following dates:

<b>VIOLATION</b>	<b>WHEN</b>	<b>ALLOWED</b>	<b>ACTUAL</b>
Dissolved Oxygen	7/1/2004 - 7/31/2004	6.0 mg/l	5.8
Dissolved Oxygen	5/1/2004 - 5/31/2004	6.0 mg/l	2.5
Dissolved Oxygen	6/1/2003 - 6/30/2003	6.0 mg/l	5.0
Dissolved Oxygen	4/1/2003 - 4/30/2003	6.0 mg/l	5.7
Dissolved Oxygen	12/1/2002 - 12/31/2002	6.0 mg/l	5.5
Dissolved Oxygen	11/1/2002 - 11/30/2002	6.0 mg/l	4.3
Dissolved Oxygen	10/1/2002 - 10/31/2002	6.0 mg/l	4.6
Dissolved Oxygen	9/1/2002 - 9/30/2002	6.0 mg/l	1.6
Dissolved Oxygen	7/1/2002 - 7/31/2002	6.0 mg/l	5.1
Dissolved Oxygen	6/1/2002 - 6/30/2002	6.0 mg/l	4.0
Dissolved Oxygen	5/1/2002 - 5/31/2002	6.0 mg/l	5.7
Dissolved Oxygen	3/1/2002 - 3/31/2002	6.0 mg/l	5.0
Dissolved Oxygen	2/1/2002 - 2/28/2002	6.0 mg/l	5.7
Dissolved Oxygen	12/1/2001 - 12/31/2001	6.0 mg/l	4.6
Dissolved Oxygen	11/1/2001 - 11/30/2001	6.0 mg/l	3.7
Dissolved Oxygen	9/1/2001 - 9/30/2001	6.0 mg/l	5.5

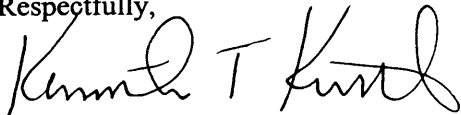
#### IV. CONCLUSION

If the conditions causing the above violations are not corrected within 60 days, such that it is absolutely clear that there is no reasonable likelihood that the violations will recur, Potomac Riverkeeper intends to file suit seeking civil penalties, injunctive relief, and litigation costs as provided by the CWA, on behalf of itself and its members.

Potomac Riverkeeper reserves the right to include in its complaint allegations of any additional violations of the permit not included in this 60-day notice letter. Furthermore, this letter does not preclude Potomac Riverkeeper from bringing suit for violations under any other statutory law, or to sue for violations of the CWA other than those described above.

Potomac Riverkeeper believes that this notice of intent to sue complies with the requirements of §505(b) of the CWA, 33 U.S.C. §1365(b) and accompanying regulations. Moreover, Potomac Riverkeeper requests to be informed and included in any settlement negotiations between Knobley and the EPA that may arise because of this 60-Day Notice or subsequent litigation initiated by Potomac Riverkeeper or the EPA. If you would like to discuss this matter further or provide us with additional information, please contact us within the next two weeks.

Respectfully,



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